

REMARKS

Applicants wish to thank the Examiner for the indication of allowable subject matter in claims 7, 20, 21, 22, 28, 52-54 and 60. Applicants wish to note, however, that claim 8 has been mistakenly omitted from the list of pending claims, and from the list of allowed claims based on its dependency from allowed claim 7. Please refer to the detailed discussion below.

Claims 3, 7, 8, 20-22, 28, 52-54 and 60 were previously pending. The listing of claims has been amended to include claim 8, which depends from allowed claim 7, and which had been previously omitted because of a typographical error. Thus, claims 3, 7, 8, 20-22, 28, 52-54 and 60 are once again presented and believed to be in condition for allowance.

I. Omission of claim 8

Applicants respectfully submit that claim 8 has been erroneously omitted from the listing of pending claims, and from the listing of allowable claims. In the Advisory Action mailed September 19, 2007, the Examiner acknowledged that claim 8 was objected to, however, in the subsequently issued Final Rejection mailed November 1, 2007, the Examiner has omitted claim 8 from the list of pending claims. It appears that the problem originated in the Amendment filed June 26, 2007, which notably was prior to the Advisory Action, where the listing of claims included the typographical error of omitting claim 8. Applicants' intention for maintaining claim 8 in the application is clear, however, as in the Remarks section Applicants clearly indicated that claim 8 was still being presented for consideration, and had not been cancelled. Thus, Applicants respectfully request that the Examiner acknowledge the pending and allowed status of claim 8.

For further background, Applicants note that claim 8 has had an "objected to" status since the Office Action mailed October 25, 2000. Notably, claim 7, from which claim 8 depends, was also objected to in the same action. In a subsequent succession of Responses/Amendments and Office Actions, claim 8 was never rejected or cancelled, but always maintained as being objected to. As noted in the Amendment After Final filed July 8, 2002, Applicant did not amend claim 8, but instead amended claim 7 to place it in allowable form, thereby placing claim 8 in allowable form via dependency. In particular, at page 9 of the Amendment After Final filed July 8, 2002, Applicants stated:

The Examiner has expressly indicated that Claims 7, 8, 28, 43 and 60 would be allowable if amended to include each of the limitations presented in the base claims. Applicants have amended these claims as requested. *It should be noted that Claim 8 depends from Claim 7. Therefore, it is not necessary to amend Claim 8.* (emphasis added).

This Amendment After Final was back in the days when all claims were not listed in a response, but only the claims currently being amended.

Following the Amendment After Final of July 8, 2002, and after the abandonment and revival of the application, the next Office Communication was the Notice of Non-Compliant Amendment mailed June 15, 2007. The non-compliance was due to the presentation of the claims in the July 8, 2002 amendment not meeting current formatting standards. As noted above, in the subsequent Amendment filed June 26, 2007, the listing of claims included the typographical error of omitting claim 8, however, in the Remarks section Applicants clearly indicated that claim 8 was still being presented. In the Advisory Action mailed September 19, 2007, the Examiner acknowledged that despite the typographical error, he still considered claim 8 to be a pending claims based on the indication that claim 8 was objected to. In the subsequent RCE, the Applicants indicated that the Amendment of June 26, 2007 should be considered, and have always maintained that claim 8 is pending. Further, even following the typographical error, the Examiner continued to acknowledge claim 8 up until the present action. Therefore, Applicants respectfully submit that claim 8, which depends from allowed claim 7, is properly present in the application, has been considered, and is in form for allowance.

II. Omission of pending claim 3 from Office Action Summary

Applicants note that in the Office Action Summary sheet of the Final Rejection, claim 3 was omitted from the Disposition of the Claims. The Examiner clearly considered claim 3, however, based on the 35 USC 103 rejection of claim 3 on page 2 of the Final Rejection. Thus, Applicants submit that claim 3 has been fully considered by the Examiner, and consider the omission of claim 3 from the Office Action Summary as merely a typographical error.

III. Claim Objection

The Examiner objected to claim 8, as the previous listing of claims included a typographical error omitting claim 8. Contrary to the suggestion of the Examiner, however, claim 8 has never been cancelled from the present application. As explained in detail above, claim 8 is pending in its original form, and is allowable as being dependent from allowed claim 7. As such, Applicants have corrected the listing of claims to include original claim 8. Therefore, this objection is now moot.

Thus, Applicants respectfully request that Examiner withdraw this objection.

IV. Rejection under 35 USC § 103(a)

The Examiner rejected claim 3 under 35 USC § 103(a) as being obvious over Agre (US 5,978,679) in view of Anderson et al. (US 6,088,590). Applicants respectfully traverse this rejection.

The Examiner has failed to make a *prima facie* rejection under 35 USC § 103, as Agre is not citable prior art with respect to the present application. The following is a quotation of 35 USC §103(c) which forms at least one basis for withdrawal of this rejection:

(c) Subject matter developed by another person, which qualifies as prior art only under subsection (e), (f), and or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Agre only qualifies as prior art with respect to the present application under 35 USC § 102(e). Further, the subject matter of Agre and the claimed invention were, at the time the invention was made, subject to an obligation of assignment to QUALCOMM, Incorporated. Therefore, Agre is not a citable reference with respect to the subject application. Furthermore, the remaining prior art fails to teach or suggest the elements claimed in the present invention.

Thus, in view of the foregoing, Applicants respectfully request that the Examiner withdraw the rejection of claim 3 under 35 USC § 103(a) as being obvious over Agre in view of Anderson.

V. Double Patenting Rejection

The Examiner has rejected claims 7, 20, 21, 22, 28, 52-54 and 60 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-22 of US Patent No. 7,092,716.

Applicants have enclosed a Terminal Disclaimer with respect to US 7,092,716 to overcome this rejection.

Thus, Applicants respectfully request that the Examiner withdraw the rejection of claims 7, 20, 21, 22, 28, 52-54 and 60 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-22 of US Patent No. 7,092,716.

VI. Allowable Claims

As noted above, Applicants wish to thank the Examiner for the indication of allowable subject matter in claims 7, 20, 21, 22, 28, 52-54 and 60.

Additionally, based on the above remarks, Applicants deem claims 3 and 8 to also be allowable.

Therefore, Applicants respectfully request that the Examiner allow pending claims 3, 7, 8, 20-22, 28, 52-54 and 60 and pass this application to issue.

CONCLUSION

In light of the above remarks, Applicants submit that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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